

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

**MARK MILLHOLON,
Plaintiff,**

vs.

**ROSCOE GATEWOOD AND
THOROUGHbred FREIGHTLINER, LLC
Defendants.**

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CIVIL ACTION NO. _____

JURY REQUESTED

DEFENDANT THOROUGHbred FREIGHTLINER, LLC'S NOTICE OF REMOVAL

Defendant **THOROUGHbred FREIGHTLINER, LLC** files this its Notice of Removal for the purpose of removing this cause to the United States District Court for the Eastern District of Texas, Sherman Division, and state as follows:

**I.
STATE COURT ACTION**

1. On July 20, 2022, Plaintiff Mark Millholon ("Plaintiff") filed his Original Petition and initiated an action against Defendants Roscoe Gatewood and Thoroughbred Freightliner, LLC in the 59th District Court, Grayson County, Texas (the "State Court Action"). (*See* Appendix Exhibit "A"). Plaintiff alleges damages and seeks monetary relief in excess of \$250,000.

2. Defendant Thoroughbred Freightliner, LLC filed its Original Answer on September 6, 2022. There was a jury demand in the State Court Action. (*See* Appendix, Exhibit "D").

3. Plaintiff's Petition against Defendants in the State Court Action alleges that Defendants were negligent.

4. The amount in controversy is in excess of \$75,000, exclusive of interest and costs. Defendant Thoroughbred Freightliner, LLC timely filed its Notice of Removal in the State Court Action. There is complete diversity of citizenship and a sufficient amount in controversy to confer jurisdiction on this court pursuant to 28 U.S.C. §1332. The above-described civil action is therefore one that may be removed pursuant to 28 U.S.C. §§1332, 1441, and 1446 and is hereby removed.

II.

FEDERAL JURISDICTION

5. Plaintiff Mark Millholon is a citizen of the state of Texas for diversity purposes.

6. Defendant Roscoe Gatewood is an individual nonresident of Texas, who resides at 808 East Hanna Davis, Murray County, Oklahoma and is a citizen of the state of Oklahoma.

7. Defendant Thoroughbred Freightliner, LLC is a foreign corporation organized and existing under the laws of Oklahoma, whose principal office is located at 8816 NW 120th Street, Oklahoma City, Oklahoma. Defendant Thoroughbred Freightliner, LLC's sole member is Rose McDaniel who is a resident of the State of Oklahoma and she is a citizen of the State of Oklahoma.

III.

BASIS FOR REMOVAL

8. This Court has original jurisdiction under 28 U.S.C. § 1332 over this civil action, and the action may be removed by Defendants pursuant to, in that it is a civil action between citizens of different states, and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

9. Plaintiff was, at the time this action commenced, and is still a citizen of the State of Texas.

10. Defendants Roscoe Gatewood and Thoroughbred Freightliner, LLC are citizens of Oklahoma for diversity purposes.

11. Because Plaintiff is a citizen of Texas and Defendants are citizens of a different state, complete diversity of citizenship exists among the parties.

12. Plaintiff is seeking monetary relief “over \$250,000 but not more than \$1,000,000” pursuant to TRCP 47 (c) (4).

13. Moreover, because plaintiffs in Texas are not limited to recovery of damages requested in their pleadings, “[l]itigants who want to prevent removal must file a binding stipulation or affidavit with their complaints.” *De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1412 (5th Cir.1995) (quoting *In re Shell Oil Co.*, 970 F.2d 355, 356 (7th Cir.1992)). “The general principle is that plaintiffs will have to show that they are bound irrevocably by their state pleadings.” *Id.* at 1412 n.10. No binding stipulation or affidavit was filed with Plaintiff’s Original Petition.

14. Given the nature of Plaintiff’s claims against Defendants, the alleged damages in this action exceed \$75,000, exclusive of interest and costs.

15. Because the amount in controversy exceeds \$75,000, this Court has subject matter jurisdiction under 28 U.S.C. § 1332, and this removal is proper.

16. Pursuant to 28 U.S.C. § 1446(a), Defendants have filed as exhibits to this Notice of Removal copies of all process, pleadings, orders and the docket sheet in the State Court Action.

17. Pursuant to 28 U.S.C. § 1446(d), Defendants will notify the clerk of the court in the State Court Action of this removal and will give notice thereof to all adverse parties.

**IV.
CONCLUSION**

18. The basis for this removal and this Court's jurisdiction is diversity of citizenship. 28 U.S.C. § 1332. Plaintiff is a citizen of Texas. Defendants Roscoe Gatewood and Thoroughbred Freightliner, LLC and its sole member are citizens of the state of Oklahoma. The amount in controversy, based on the allegations in Plaintiff's Original Petition exceeds \$75,000, exclusive of interest and costs. As such, this removal action is proper. On these grounds, Defendants hereby remove the referenced State Court Action to this Court.

WHEREFORE, Defendant **THOROUGHbred FREIGHTLINER, LLC** respectfully requests that the above-entitled action be removed from the 59th District Court of Grayson County, Texas to the United States District Court for the Eastern District of Texas, Sherman Division.

Respectfully submitted,

MARTIN, DISIERE, JEFFERSON & WISDOM, L.L.P.

By: /s/ Mark J. Dyer

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**ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been e-served to all attorneys of record, in compliance with the FEDERAL RULES OF CIVIL PROCEDURE, on this the 8th day of September, 2022.

/s/ Alan Moore

ALAN MOORE